



STATE OF WISCONSIN – JUDICIAL COUNCIL

AMENDED AGENDA

WISCONSIN JUDICIAL COUNCIL

JANUARY 21, 2022 – 9:00 A.M.

CONDUCTED ONLY BY ZOOM

MADISON, WISCONSIN

William Gleisner is inviting you to a scheduled Zoom meeting. On 1/21/22 at 9 a.m., join the Zoom Council Meeting using the following URL: ¹

<https://us02web.zoom.us/j/86116851834?pwd=VUVFY2JnaERLSU1PdDJOTHZFSGI0dz09>

When prompted, enter passcode: 555

Members of the public will be permitted to attend this meeting but must agree to refrain from disrupting the meeting. If anyone is unsure how to sign into the meeting, please email Bill Gleisner (gleisnerwilliam@gmail.com) or call him at 414-651-3182.

I. Roll Call and approval of the November 19, 2021 Minutes.

¹ The following is additional information concerning the January 21, 2022 Zoom meeting:

Meeting ID: 861 1685 1834

Passcode: 555

One tap mobile

+13017158592,,86116851834#,,,,*555# US (Washington DC)

+13126266799,,86116851834#,,,,*555# US (Chicago)

Dial by your location

+1 301 715 8592 US (Washington DC)

+1 312 626 6799 US (Chicago)

+1 929 436 2866 US (New York)

+1 253 215 8782 US (Tacoma)

+1 346 248 7799 US (Houston)

+1 669 900 6833 US (San Jose)

Meeting ID: 861 1685 1834

Passcode: 555

Find your local number: <https://us02web.zoom.us/j/86116851834>.

- II. It is important to the continued work of the Wisconsin Judicial Council that we find other ways to provide service to the Bench and Bar. At this meeting I am going to suggest a way to communicate meaningful information to the lawyers and judges of Wisconsin, in addition to our statutorily mandated work with the Wisconsin Supreme Court or the Legislature.²

Specifically, I suggest that our members begin to explore the authoring of research articles for publication in the State Bar's Inside Track and the Wisconsin Lawyer, or other legal publications like the Wisconsin Law Journal. What is needed is for our members to seek to publish research articles concerning procedural rules or related practice issues which are important to the Bench and Bar. These articles would not be published by the Council, but Council members who publish such articles might consider making reference to their Council membership. So, exactly what articles would be of interest to the Wisconsin Bench and Bar? Others may have additional suggestions, but I would suggest the following.

- A. From time to time, the Wisconsin Supreme Court or the Legislature create new Rules of Civil Procedure or Rules of Evidence, or otherwise amend existing Rules. When this occurs, members of the Council may be able to assist the Bench and Bar in understanding those Rules by publishing research articles which will elucidate the meaning of the new or amended rules, or help place those rules in a proper context.
- B. Another possible research article might be generated by members of the Council's three standing committees. For example, an article might be authored by members of the Evidence and Civil Procedure Committee concerning proposed amendments to our rules governing injunctions. Such an article might serve the added purpose of putting a proposed rule out for comment by stakeholders in the State Bar.
- C. I encountered one other example of a possible type of research article recently while reading the Fall 2021 Journal of the ABA's Litigation Section. An article there triggered memories for me of all the times over the years when litigators I have known have asked me whether or how it is possible to seek discovery before the commencement of an action. The ABA article in question is about the Federal Rules of Civil Procedure and was authored by Judge Samuel Thumma. It is entitled

² I believe that the suggestions in this Agenda are consistent with Wis. Stat. §758.13(2), which specifies that the duties of the Council include the following:

(b) Survey and study the organization, jurisdiction and methods of administration and operation of **all the courts of this state**.

(d) Receive, consider and in its discretion investigate suggestions from any source pertaining to **the administration of justice and to make recommendations**.

(e) Keep advised concerning the decisions of the courts **relating to the procedure and practice** therein and concerning pending legislation affecting the organization, jurisdiction, operation, procedure and practice of the courts [Emphasis supplied].

Rule 27(a) – The Powerful, Octogenarian, Overlooked Pre-Litigation Discovery Rule Hidden in Plain Sight, a copy of which is attached. While this article contains some useful federal authority, there are actually ten pages of case annotations and other authority under this Rule in my Gensler’s Federal Rules of Civil Procedure Annotated.

FRCP 27(a) reads very much like our Wis. Stat. §804.02(a), which is not surprising. According to Grenig, Wisconsin Practice Series – Civil Procedure (4th Ed. 2010, as updated by Pocket Part): “Wis. Stat. §804.02 is adapted from Rule 27 of the Federal Rules of Civil Procedure.” *Id.* at p. 664. However, Professor Grenig makes the following additional observation concerning an important difference between FRCP 27(a) and Wis. Stat. §804.02:

[Wis. Stat. §804.02] liberalizes the showing of need required for depositions to perpetuate testimony under Rule 27(a)(1). [This is because] Wis. Stat. §804.02(1)(a) does not include the Federal requirement that the petitioner state not only that he or she expects to be party, but also that he or she ‘is presently unable to bring [the action] or cause it to be brought.’ This requirement was eliminated in order to accommodate the situation where settlement negotiations are underway and the plaintiff prefers to postpone the decision to commence suit, but wishes to guard against the loss of evidence.

Grenig, *Id.* at p. 664. One can imagine how a detailed research article discussing and comparing the foregoing Federal Rule and Wisconsin rule might be of interest to Wisconsin practitioners.

The point is that there are a number of possible research articles which our membership could author in their capacity as recognized members of the Judicial Council which will communicate both important and useful information to the Wisconsin’s Bench and Bar and which will be consistent with the Council’s statutory mandate under Wis. Stat. §758.13.

III. Committee Reports.

- (a) Evidence & Civil Procedure Committee.
- (b) Criminal Procedure Committee.
- (c) Appellate Procedure Committee.

IV. Adjournment.

PUBLIC NOTICE

All meetings of the Judicial Council and its committees are open to the public. The Council's January 21, 2022 meeting will be only conducted by Zoom. Members of the public are welcome to join the meeting by using the URL which is set forth above, or by using the Zoom application and entering Meeting No. 861 1685 1834 and, when prompted, passcode 555. However, members of the public must supply their name before they will be granted admission. In addition, the mikes of the public participants will be muted. If any member of the public disrupts the meeting in any way, they will be removed from the meeting and will be barred from readmission. For more information, please contact the Chair of the Judicial Council, Mr. Gleisner, at 414-651-3182 or gleisnerwilliam@gmail.com.